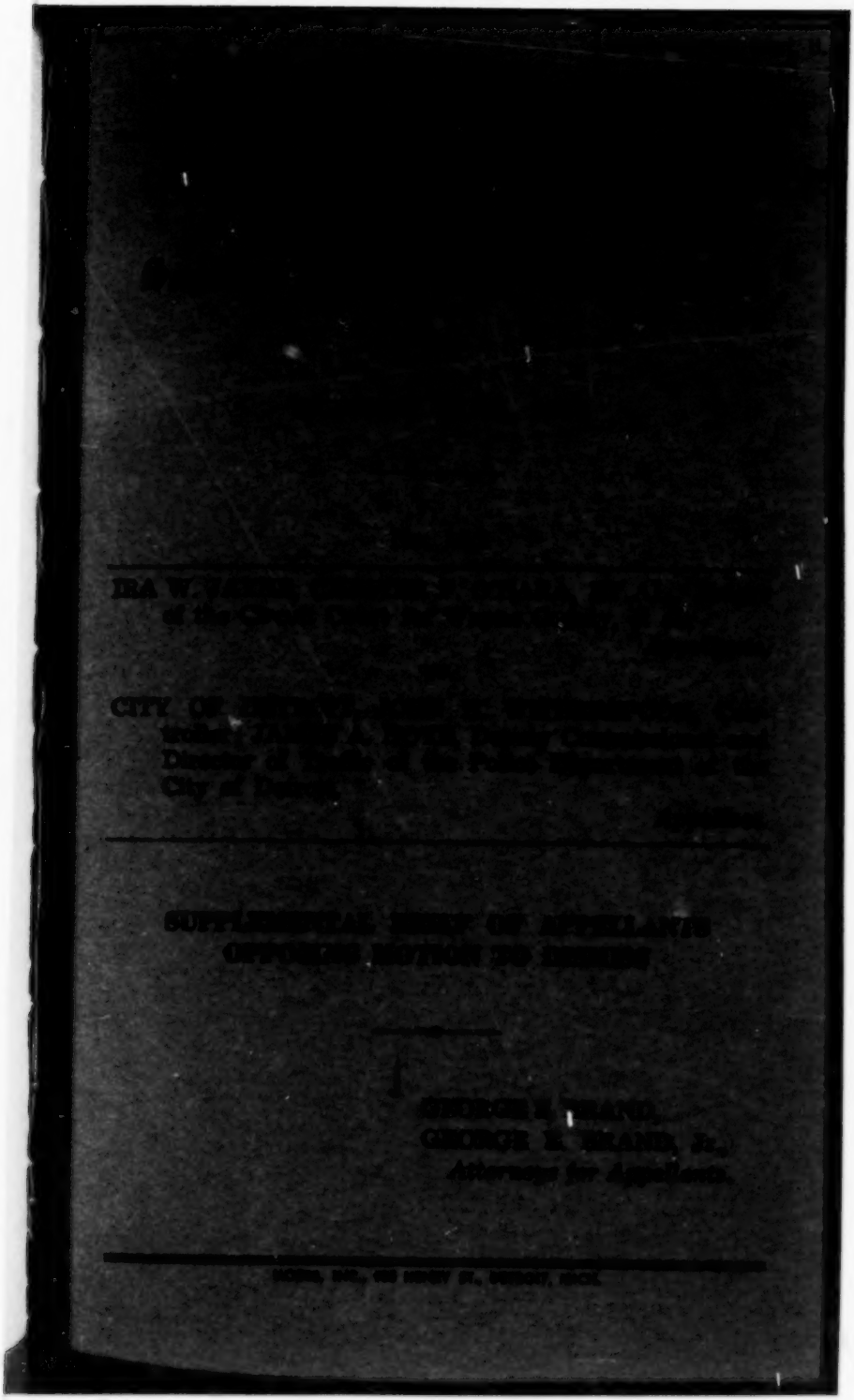

In The

Supreme Court of the United States

OCTOBER TERM, 1954

No. 152

IRA W. JAYNE, CHESTER P. O'HARA, ET AL., Judges of the Circuit Court for Wayne County, et al.,

Appellants,

vs.

CITY OF DETROIT, JOHN H. WITHERSPOON, Controller; JAMES A. HOYE, Deputy Commissioner and Director of Traffic of the Police Department of the City of Detroit,

Appellees.

SUPPLEMENTAL BRIEF OF APPELLANTS OPPOSING MOTION TO DISMISS

We refer to the recent decision in *Sammons v. City of Beaufort*, Supreme Court of South Carolina, July 21, 1954, 83 S. E. 2d 153, in which that Court refers to *Gate City Garage, Inc. v. City of Jacksonville* (Fla.), 66 So. 2d 653, and *Wayne Village President v. Wayne Village Clerk*, 323 Mich. 592, cited by appellees.

The *Sammons case* involved the validity of a state statute and a city ordinance for revenue bond financing of a city owned and operated off-street parking *lot* by pledge of the income therefrom and from on-street parking meters under a covenant to maintain such meters and to charge fees for on-street parking sufficient to service the bonds. In deciding that such covenant was invalid, the court said:

> "It is a fundamental principle of constitutional law that no legislative body may part with its right to exercise the police power, nor may a municipality to which such power has been delegated divest itself of same by contract or otherwise. It is a continuing power which may be exercised as often as required in the public interest and must always remain fluid. * * *
>
> "We think that the covenant to maintain during the life of these bonds parking meters on the streets of Beaufort and to charge fees for the use of parking spaces thereon sufficient to service said bonds, constitutes an ineffective attempt to barter away the police power. * * * The governing body of the City of Beaufort must be left unrestricted in the future to adopt any parking regulations necessary for the public safety and welfare.
>
> "* * * It is true that the right is reserved to make appropriate changes in the location of parking meters where necessary in the regulation and control of traffic, but this is subject to the limitation that no such changes shall 'materially lessen the amount of revenues to be derived from its On-Street Parking Facilities.' It will thus be seen that the City covenants that the revenue derived from the on-street parking meters shall not be substantially reduced. As a result, future councils would be considerably restricted in making changes and certainly could not do away entirely with parking meters on the streets."

Referring to the Florida and Michigan cases, ante, the court added:

> "* * * Covenants to maintain on-street parking meters throughout the life of certain revenue bonds were upheld in these decisions. However, the question of whether a covenant of this nature constituted an attempt to barter away the police power was not discussed in the Michigan case, not referred to in the majority opinion in the Florida case, although lucidly discussed in the dissenting opinion. It must be conceded that the question of bartering away the police power was squarely met in the West Virginia and Illinois decisions, but we are not in accord with the views therein expressed on this question."

Thus the decisions of state Supreme Courts are in conflict as to a question of constitutionality of a covenant bartering away police-power—the final determination of which can only be made by the Supreme Court of the United States. The problem presented is a current one and is not confined to any particular area, but is widespread and of great moment.

Respectfully submitted,

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GEORGE E. BRAND, Jr.,
Attorneys for Appellants.

Dated September 22, 1954.